

defendant who had formed the second defendant (company) cannot be restrained from using the words "Tee Yih Jia" or using the Logo and get up complained of, since PW1 who became the sole owner of the plaintiff, had by the agreement, expressly given his consent for their use.

I would, therefore, allow this appeal with costs.

a YEONG AH CHEE @ YAN HON WAH

v.

**LEE CHONG HAI & ANOR. AND 13
OTHER APPEALS**

**b SUPREME COURT, KUALA LUMPUR
TAN SRI DATO' HARUN BIN MAHMUD
HASHIM SCJ,
DATO' PEH SWEE CHIN SCJ,
TAN SRI DATO' MOHD EUSOFF BIN CHIN
SCJ**

**c [CIVIL APPEAL NOS: (I) 02-485-91;
(II) 02-488-91; (III) 02-490-91; (IV) 02-491-91;
(V) 02-494-91; (VI) 02-496-91; (VII) 02-498-91;
(VIII) 02-486-91; (IX) 02-487-91; (X) 02-489-91;
(XI) 02-492-91; (XII) 02-493-91; (XIII) 02-495-91
& (XIV) 02-497-91]
3 JUNE 1994**

**d TRUSTS: Vendors entering into agreement for
sale of land - Vendors subsequently making trust
deeds holding land as trustees for beneficiaries -
Land transferred to purchasers - Beneficiaries
suing surviving trustee and purchasers for re-
turn of the land - Whether there was a valid trust
created - Whether there was a completely consti-
tuted trust - Beneficiaries not providing consid-
eration for creation of the trusts - Beneficiaries
mere volunteers - Whether equity can come to the
aid of the beneficiaries.**

f In these 14 appeals, which were heard together, the respondents are three beneficiaries under seven trust deeds dated 17 June 1970 who sought declarations, retransfers of the land and damages for fraudulent breach of trust against the trustees.

g The appellants, the purchasers of the land and/or their nominees and assigns and the surviving trustee, contended that they were the purchasers of the land or that they had acquired them *bona fide* for valuable consideration from the original purchasers of the land which in any event was before the date of the trust deeds. In the premises the appellants contended that the trust deeds were void.

h The learned Judge at first instance held that the appellants knew that the land was trust property and that as the land was transferred without an order of the Court, the transfers were void constituting a fraud within the meaning of s. 340(2) of the National Land Code 1965. The appellants appealed against the decision of the High Court allowing the respondents prayers.

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Held:

[1] It is an old and well settled rule of equity that under a valid contract for sale of land, the beneficial ownership of the land passes to the purchaser who becomes the equitable owner, the vendor having a right to the purchase money for which he has a lien on the land. When the full purchase price is paid, the vendor becomes a bare trustee for the purchaser.

[2] Looking at the 7 trust deeds except for that in Civil Appeal No. 5, two of the three essentials of a valid trust are present, namely certainty of words and certainty of object. However there is no certainty of subject i.e. the trust property, because the beneficial ownership of the land passed to the purchasers in 1969 when the sale of these lands took place, which was before the trust deeds were executed. The trustees, also being the settlors of the lands, could not vest the land in themselves as trustees at the time of signing of the trust deeds as they were not the owners of the lands both in law and in equity, they having disposed of the land to the purchasers before then.

[3] In the circumstances, except for Civil Appeal No. 5, all the trusts created by all the trust deeds in all the other civil appeals fail because the relevant trust deeds are invalid, by virtue of uncertainty of the respective subjects of the trusts.

[4] In the absence of any evidence to the contrary acceptable to the Court, the trustees at the time of signing the trust deed in Civil Appeal No. 5, were the owners of the land in question at law and in equity and the trust created by it does not fail for uncertainty of subject or trust property.

[5] The beneficiaries, not having given any valuable consideration for the creation of the trust, are volunteers and it is a settled rule that a Court of equity would not render assistance to a volunteer in the case of a trust property which has not been completely and finally vested in the trustee. In the case of Civil Appeal No. 5, as the trust property had completely vested in the trustees when the trust deed was signed, there was a completely constituted trust and accordingly the appeal in Civil Appeal No. 5 ought to be dismissed. Similarly Civil Appeal No. 12 which relates to the same piece of trust property should also be dismissed.

[Civil Appeal Nos. 5 & 12 dismissed with costs. All other appeals allowed with costs].

a [Bahasa Malaysia Translation of Headnote]

AMANAHA: Penjual menandatangani perjanjian untuk menjual tanah - Penjual kemudiannya membuat suratikatan amanah dengan memegang tanah sebagai pemegang amanah bagi benefisiari - Tanah dipindahmilik kepada para pembeli - Benefisiari menyaman pemegang gadaian dan pembeli yang masih hidup untuk pengembalian tanah tersebut - Sama ada terdapat amanah yang sah diwujudkan - Sama ada ianya merupakan sukarelawan sahaja - Sama ada ekuiti boleh membantu benefisiari.

c Dalam 14 rayuan ini yang didengar secara bersama, respondennya ialah tiga benefisiari di bawah tujuh suratikatan amanah bertarikh 17 Jun 1970 yang memohon perisytiharan, memindahmilik semula akan tanah tersebut dan gantirugi bagi salahnyataan pecah amanah terhadap pemegang-pemegang gadaian.

d Para perayu, pembeli tanah tersebut dan/atau namaan dan penerima serahan hak mereka serta pemegang gadaian yang masih hidup menghujahkan bahawa mereka merupakan pembeli tanah tersebut atau bahawa mereka telah memperolehnya secara *bona fide* bagi balasan yang bernilai daripada pembeli asal tanah tersebut yang mana adalah dibuat sebelum tarikh suratikatan amanah tersebut. **e** Dalam hal ini perayu menghujahkan bahawa suratikatan amanah adalah terbatal.

Hakim yang bijaksana tersebut pada mulanya memutuskan bahawa para perayu mengetahui yang tanah tersebut merupakan harta amanah dan memandangkan bahawa tanah tersebut telah dipindahmilik tanpa perintah Mahkamah, pindahmilik tersebut adalah terbatal dan membentuk suatu fraud dalam lingkungan s. 340(2) Kanun Tanah Negara 1965. Para perayu merayu terhadap keputusan Mahkamah Tinggi yang membenarkan pohonan responden. **g**

Diputuskan:

h [1] Ianya merupakan suatu kaedah ekuiti yang telah lama termaktub bahawa di bawah sesuatu kontrak jualan tanah yang sah, keempunyaan benefisiari tanah akan diberikan kepada pembeli yang menjadi pemilik ekuitinya, penjual mempunyai hak ke atas wang belian bagi mana beliau mempunyai lien ke atas tanah berkenaan. Apabila harga belian dibayar sepenuhnya, penjual menjadi pemegang amanah bare bagi pembeli.

i [2] Melihat kepada 7 suratikatan amanah melainkan yang dalam Rayuan Sivil No. 5, dua

daripada kepentingan dalam sesuatu amanah yang sah adalah wujud, iaitu kepastian kata-kata dan kepastian objek. Walau bagaimanapun, tiada kepastian mengenai sesuatu subjek, iaitu harta amanah kerana keempunyaan benefisial tanah tersebut diberikan kepada pembeli dalam tahun 1969 apabila jualan tanah-tanah ini dibuat, yang mana dibuat sebelum suratikatan amanah ditandatangani. Pemegang-pemegang amanah yang juga merupakan penduduk di tanah tersebut tidak dapat meletakkan hak tanah tersebut kepada diri mereka selaku pemegang amanah sewaktu suratikatan amanah ditandatangani memandangkan mereka bukan merupakan tuanpunya tanah baik dari segi undang-undang mahupun ekuiti kerana mereka telah melupakan tanah tersebut kepada para pembeli sebelum itu.

[3] Dalam hal ini, kecuali Rayuan Sivil No. 5, segala amanah yang diwujudkan oleh kesemua suratikatan amanah dalam lain-lain rayuan sivil itu gagal kerana suratikatan amanah adalah terbatal menurut ketidakpastian subjek dalam amanah berkenaan.

[4] Dalam ketiadaan sebarang bukti yang bertentangan yang boleh diterima oleh Mahkamah, pemegang-pemegang amanah sewaktu suratikatan amanah ditandatangani dalam Rayuan Sivil No. 5, merupakan tuanpunya tanah terlibat disisi undang-undang dan ekuiti serta amanah yang diwujudkan olehnya tidak gagal kerana ketidakpastian akan subjek atau harta amanah.

[5] Benefisiari, yang tidak mempunyai sebarang balasan yang sewajarnya bagi kewujudan amanah tersebut, adalah merupakan sukarelawan dan telah termaktub bahawa sesebuah Mahkamah ekuiti tidak akan membantu sukarelawan dalam kes harta amanah yang mana belum diselesaikan dan akhirnya terletak hak kepada pemegang gadaian. Dalam kes Rayuan Sivil No. 5, oleh kerana harta amanah tersebut adalah terletak sepenuhnya dalam pemegang-pemegang amanah apabila suratikatan tersebut ditandatangani, terdapat satu amanah yang terbentuk sepenuhnya dan berikutan dengan itu rayuan dalam Rayuan Sivil No. 5 haruslah ditolak. Begitu juga dengan Rayuan Sivil No. 12 yang berhubung dengan harta amanah yang sama haruslah ditolak.

[Rayuan Sivil No. 5 & 12 ditolak dengan kos. Lain-lain rayuan dibenarkan dengan kos].

a Cases referred to:

Lysaght v. Edwards [1976] 2 Ch D 499 (**refd**)
Intercontinental Miners Sdn. Bhd. v. Society Des Etains De Banjas Tudgu [1974] 1 MLJ 145 (**refd**)
Temenggong Securities Ltd. v. Registrar of Titles, Johore [1974] 2 MLJ 45 (**refd**)
Oh Hiam v. Tham Kong [1980] 2 MLJ 159 (**refd**)
Milroy v. Lord [1862] De G.F. 264 (**refd**)

b

Legislation referred to:

Civil Law Act 1956
 National Land Code 1965, s. 340(2)

For the appellants in Civil Appeals Nos 1 to 7 - Lee Kong Fee; M/s. Lee Kong Fee & Co

c

For the appellants in Civil Appeals Nos 8 to 14 - Cecil Abraham (Robert Lazar with him); M/s. Shearn & Delamore
For the respondents in Civil Appeals Nos 1 to 14 - Upali Masacorale; M/s. Jackson & Masacorale

JUDGMENT

d

Peh Swee Chin SCJ:

The above 14 appeals were heard together. The same substantial questions of law and fact are involved. The 14 appeals have been lodged against the same order of the High Court made on 8 October 1991.

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There is one appellant in each of the first 7 civil appeals as listed and set out above in Roman numerical symbols, except Civil Appeal No. 5 where there are 2 appellants instead and these two appellants are registered presently as proprietors of a piece of land. In the other 6 appeals, there is a sole appellant in each of them, each being registered presently as the proprietor of a piece of land. It will be seen that a piece of land is involved in each appeal, totalling seven pieces of land.

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The sole appellant in each of the next seven appeals, i.e. appeals Nos 8 to 14 as similarly set out above is the same person, one Lee Geok Thye, a surviving trustee out of 2 trustees viz Lee Geok Swee (since deceased) and Lee Geok Thye in 7 trust deeds, the 2 original trustees were brothers and uncles to the respondents in the above 14 appeals. A trust deed is involved in each of those appeals concerning each of the 7 pieces of land stated earlier.

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The respondents consist of 3 persons, viz George Lee, Lee Chong Hai and Lee Boon Guan, one or two of them jointly claim to be beneficiaries under each of the 7 trust deeds in respect of each of the 7 pieces of land respectively as stated above.

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The common date of the 7 trust deeds is crucial; it is 17 June 1970.

It is inevitably necessary and also convenient to set out at least a copy of one of the trust deeds for the words therein, e.g. in appeal No. 8 above, for the trust deeds are identical except (1) for the variation in the names of the 3 brothers as beneficiaries, and (2) the variation in the lot numbers of the 7 pieces of land, each trust deed being in respect of each of the 7 pieces of land stated above. The trust deed to be set out for illustration is as follows:

Trust Deed

Know All Men By These Presents That We, Lee Geok Swee (I/C No. 1305051), both of No. 115, Jalan Yam Tuan, Kuala Pilah do hereby hold the whole of the land held under Qualified Title (R) No. 71, Lot No. 2039 in the Mukim of Pedas, District of Rembau trust for Lee Chong Hai and Lee Boon Guan.

In Witness Whereof We have hereunto set our hands on 17 June 1970.

Signed by the said)
Lee Geok Swee and) Sgd
Lee Geok Thye, in) Sgd
the presence of)

Sgd
(Mohd Yazid Baba)
Advocate & Solicitor
Seremban

The above 14 appeals arose out of the 7 civil suits mentioned above. In the 7 civil suits, the 3 said beneficiaries are the plaintiffs, suing either singly or jointly, for declarations, re-transfer of the 7 pieces of land, damages for fraudulent breach of trust allegedly committed by the 2 original trustees, (but only 1 of them, the surviving trustee, viz Lee Geok Thye was sued), in transferring the 7 pieces of land to the present owners of the 7 pieces of the land, in breach of the 7 trust deeds, (the present owners of the 7 pieces of land are hereafter called the present landowners and 7 pieces of land, the lands, wherever the context requires it).

Lee Geok Thye and the 7 present landowners deny the allegations and claim that when the 7 trust deeds were executed by Lee Geok Thye and the deceased co-trustee, (the trustees) were no longer owners of the said 7 pieces of land and thus all the trust deeds are void. The present landowners plead that they were purchasers of the lands or that in some cases they have

a acquired them *bona fide* or for valuable consideration from such purchasers of lands. All such original purchasers bought the lands before the date of the 7 trust deeds from the 2 trustees of the said 7 trust deeds.

b No reason was given for having the 7 trust deeds done or signed, by any of the three beneficiaries, nor was the solicitor who witnessed the signing of the 7 trust deeds called. No cross-examination was also directed on this reason. It is common ground that no valuable consideration was given by the 3 beneficiaries for the creation of the trusts by means of the 7 trust deeds. There seems to be a tacit agreement by all parties to keep such reason under wraps.

c All the documents are either agreed, as from agreed documents or agreed bundles of documents, touched on in evidence or submission. All the bundles were at the time of hearing in the lower Court expressly treated by all parties as agreed bundles.

d The history of these appeals began with the proposal by Lee Geok Thye and the deceased co-trustee, viz his (brother) called Lee Geok Swee together with 9 other persons to buy Lot 1008 held under C.T. 5188, Mukim of Pedas, District of Rembau, State of Negeri Sembilan and this they did for the purpose of building up the financial capability to buy the said Lot 1008 from the vendors. It is not disputed and as shown by photocopies of the documents of title of the lands that they used to form part of the said Lot 1008 and such documents of title are derivative documents of title from C.T. 5188 aforesaid. The proposal was reduced into an agreement in writing, viz D15, by which they agreed to take each a specific portion of the undivided Lot 1008 and to contribute a specified sum each therefore. They further agreed to apply for sub-division of the Lot 1008 in accordance with the portions chosen by them. D15 is set out below:

e This Agreement is made the 5th day of March 1969 between Lee Geok Thye and Lee Geok Swee both of 115 Jalan Yam Tuan, Kuala Pilah (hereinafter called the Party of the First Part), Yong Heng of 15 Main Road, Pedas, Rembau (hereinafter called the Party of the Second Part), Fong Yap Moi (f), Wong Siong (f), Wong Yau (f), and Yong Kum all of 90 Main Road, Kuala Sawah, Negeri Sembilan (hereinafter called the Party of the Third Part), Chai Swee Mork of Legong Ulu Estate, Kota (hereinafter called the Party of the Fourth Part), Yong

Siong Lam of Lubok China, Rembau (hereinafter called the Party of the Fifth part), Chai Huai (f) of 31 Main Road, Pedas (hereinafter called the Party of the Sixth Part), Chua Bee Eng (f) of 31 Main Road, Pedas (hereinafter called the Party of the Seventh Part).

Whereas the parties hereto have agreed to purchase the whole of the land held under the Certificate of Title No. 5188 for Lot No. 1008 Mukim of Pedas District of Rembau (hereinafter referred to as the said land) at the purchase price of RM127,500 and the parties have agreed that each shall put up the following sums in respect of the portion of the said land each party is purchasing having regard to the condition and age of the rubber trees planted therein, which said portions are marked and numbered on the sketch plan annexed thereto.

And Whereas the parties hereto had nominated the Party of the First Part to enter into an Agreement with the owners of the said land to purchase the said land at the agreed price of RM127,500.

In consideration of the premises the parties hereto have agreed as follows:

Portions Numbered	Area (acres)	Sum (RM)	To be put up by which party
1 and 7	12	23,750.00	Party of the Second Part
4 and 8	11.75	21,032.50	Party of the Third Part
2	9.75	17,550.00	Party of the Fourth Part
3	9.75	17,550.00	Party of the Fifth Part
6	9.75	17,500.00	Party of the Sixth part
5	9.75	17,500.00	Party of the Seventh Part
9, 10, 11 & 12	158.125	12,517.50	Party of the First Part
	221.375	RM127,500.00	

Upon the sums mentioned above being paid in full by the parties as specified above, the said land shall be sub-divided into the portions numbered above and the parties caused to be registered proprietors of their respective portions of the said land.

The Party of the First Part had purchased the said land and has made application for the subdivision of the said land in accordance with the sketch plan annexed hereto.

In Witness Whereof the parties have hereunto set their hands at Seremban the day month and year first above written.

a Signed by the Party of the Part,
Lee Geok Thye and Lee Geok
Swee in the presence of: Sgd
.....

Signed by the Party of the
Second Part, Yong Meng in
the presence of: Sgd
.....

b Signed by the Party of the Third
Part, Fong Yap Moi (f), Wong
Siong (f), Wong Yau (f) and
Yong Kum in the presence of: Sgd
.....

Signed by the Party of the Fourth
Part, Chai Swee Mork in the
presence of: Sgd
.....

c Signed by the Party of the Fifth
Part, Yong Siong Lam in the
presence of: Sgd
.....

Signed by the Party of the Sixth
Part, Chan Huay (f) in the
presence of: Sgd
.....

d Signed by the Party of the
Seventh Part, Chua Bee Eng (f)
in the presence of: Sgd
.....

It will have been noticed also from D15 that all parties appointed Lee Geok Thye and his brother, i.e. the said Lee Geok Swee, since deceased, to sign the agreement of sale and purchase of the Lot 1008 from the vendors, (the two brothers are hereafter called Lee brothers or the two trustees wherever it is appropriate).

The date of the D15 is crucial, it is 5 March 1969, a date anterior to the common date of the 7 trust deeds which in turn is 17 June 1970.

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A few days after the date of D15, the Lee brothers lost no time in signing the sale and purchase agreement of Lot 1008 from its vendors by paying a deposit of 10% and agreeing to pay within a certain time thereafter, the balance of the price the total amount of which was RM127,500. The present landowners' documents of title which are sub-divisional titles derived from the earlier C.T. 5188 show they were issued first by the authorities to Lee brothers who then transferred them to the present landowners. This means inevitably that C.T. 5188 must have been transferred already to the Lee brothers by its vendors so that the sub-divisional titles (or qualified titles) were then issued first to the name of Lee brothers subsequently.

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With this agreement from Lot 1008's vendors the Lee brothers would be bound in our opinion to transfer the sub-divisional titles for the

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undivided shares corresponding to the portions chosen by the other parties to the D15 to them, (and D15 is hereafter called the joint-venture agreement), on payment of the respective prices by the joint-venture agreement parties.

However, the joint-venture parties chose a form in a more elaborate way for the transactions among themselves to take place, the form being for the Lee brothers as vendors in turn and the other joint-venture parties as purchasers, entering into respective sale and purchase agreements to buy the portions chosen by the other joint-venture parties. The Lee brothers did not, of course, sign an agreement of sale and purchase to buy from themselves the portions chosen by themselves.

All these sale and purchase agreements among the joint-venture parties all provided for the payment of 10% deposit with the balance of the price in each case to be paid within a certain time thereafter, (such agreements are called subsidiary sale and purchase agreements hereafter).

It is of great importance to emphasize that all these subsidiary sale and purchase agreements among the joint-venture parties were made in 1969 before the common date in the 7 trust deeds viz 17 June 1970. They have not been challenged expressly for their genuineness with which this Court is also satisfied.

We conclude as follows from agreements and evidence taken in connection with the above civil appeals listed as above:

- (a) The appellant in Civil Appeal No. 1 above, was an assignee of one of the 7 pieces of land brought by a joint-venture party from the Lee brothers in one of the subsidiary sale and purchase agreements.
- (b) The appellant in Civil Appeal No. 2 above was the direct purchaser from Lee brothers in one of the subsidiary sale and purchase agreements.
- (c) The appellant in Civil Appeal No. 3 above was also the direct purchaser from Lee brothers in one of these subsidiary sale and purchase agreements.
- (e) The appellant in Civil Appeal No. 5 will be dealt with by the Court later on, separately and more comprehensively.
- (f) The appellant in Civil Appeal No. 6 above was a nominee or nominated by such 2nd

a party of the 2nd party in the joint-venture agreement dated 5 March 1969 to buy from the Lee brothers.

- (g) The appellant in Civil Appeal No. 7 above was the direct purchaser from the Lee brothers in one of these subsidiary sale and purchase agreements.

b In giving judgment in favour of the respondents in the Court below, the learned Judge, held, first, in effect, that though these subsidiary sale and purchase agreements were made before the common date of the trust deeds, the sales by these subsidiary sale and purchase agreements had been "abandoned", this being an "irresistible presumption". This "irresistible presumption" according to the learned Judge seems to have arisen wholly or partly from (a) the absence of evidence about full purchase price having been paid; (b) from the fact that the transfers were executed in favour of the present landowners some "7 years and 3 months later"; (c) the fact that Lee Geok Thye and the present landowners should know that the 7 pieces of land were subject to the existing trusts, at the time of such transfers, (d) the fact that there was no sanction of Court for the transfers which were therefore void, (e) from the fact that no interest passed to the purchasers under the subsidiary sale and purchase agreements in 1969 on mere payment of a deposit (of 10% of the price) for if such interest had passed, the Lee brothers would not have signed these trust deeds, "in fact, the purchasers only obtained a caveatable interest on the property and nothing else and they did not even bother to lodge caveats", (f) and the fact that the defendants had elected not to give evidence. For the reasons given by the learned Judge and summarized above, the appellants in Civil Appeal Nos 1 to 14 above [viz the landowners and the surviving trustee in the connected 7 civil suits] had no defence, judgment was therefore entered against all defendants as prayed.

g For Lee Geok Thye, viz the surviving trustee, or one of said two original trustees, (and also the 1st defendant in all the 7 Civil Suits), the learned Judge further stated that he knew that the 7 pieces of land were trust property and so did all the present landowners and the lands were transferred to the present landowners without an order of Court, and such transfers were therefore void, constituting a fraud within s. 340(2) of the National Land Code 1965.

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In the first place, to say that the sale of the 7 pieces of land through those subsidiary agreements of sale and purchase made in 1969 between the Lee brothers and other parties in the joint-venture agreement dated 5 March 1969 had been abandoned would be untenable because the 7 pieces had in fact been transferred to the present landowners. If the Lee brothers had not received the balance of the purchase price from each of these parties in the joint-venture agreement, in pursuance of the subsidiary agreements of sale and purchase, it is really inconceivable as to why the Lee brothers should have transferred the lands to them. Such transfers would mean that the contracts *viz* these subsidiary sale and purchase agreements had been completed, a far cry from an abandonment of the contracts. The learned Judge has clearly erred in drawing an indefensibly wrong inference.

In the second place, to suggest that nothing else except a caveatable interest passed to the purchasers in 1969 on the payment of a mere deposit, is to fail to appreciate the function of a caveat, *inter alia*, of protecting an interest in land, or right to an interest in land.

It is an old and well-settled rule of equity that under a valid contract for sale of land, the beneficial ownership of the land passes to the purchaser who becomes the equitable owner, the vendor having a right to the purchase money for which he has a lien on the land. Please see *Lysaght v. Edwards* [1976] 2 Ch D 499 and this case was cited with approval very often in our courts e.g. by the Federal Court in *Intercontinental Miners Sdn. Bhd. v. Society Des Etains De Banjas Tudgu* [1974] 1 MLJ 145 and *Temenggong Securities Ltd. v. Registrar of Titles, Johore* [1974] 2 MLJ 45. When the full purchase price is paid, the vendor becomes a bare trustee i.e. unqualified trustee for the purchaser. It is also of salutary effect to remind ourselves of the fact that rules of equity apply to this country by the Civil Law Act 1956 and of the observation of Lord Russel of Killowen in *Oh Hiam v. Tham Kong* [1980] 2 MLJ 159, PC that "the Torrens system is designed to provide simplicity and certitude in transfer of land which is amply achieved without depriving equity of the ability to exercise its jurisdiction *in personam* on grounds of conscience".

In the third place, if the appellants, *viz* the defendants, elected not to give evidence but to

a make a submission, they were entitled to do so if they considered they could overcome the disadvantage of doing so.

In the fourth place, to say that the transfers to the purchasers (who were direct purchasers from the Lee brothers in 1969 or assignees as nominees of such purchasers) were void because of the trust deeds could not be supported by the evidence both oral and documentary in this case. In this connection, we are unable to agree with the trial Judge that the trust deeds in these appeals are perfect with the 3 certainties; we agree with the learned Judge only in respect of the trust deed in the case of the Civil Appeal No. 5 which will be dealt with separately later on.

The 3 essentials of a valid trust are (a), certainty of words (b), certainty of subject and (c), certainty of object. Looking at the 7 trust deeds except for that in Civil Appeal No. 5, there is certainty of words and also there is certainty of object, i.e. the names of beneficiaries but there is no certainty of subject i.e. trust property, *viz* the lands because the beneficial ownership of the lands passed to the purchasers of those subsidiary agreements of sale and purchase in 1969 when the sale of these lands took place, i.e. before the trust deeds were executed. The Lee brothers named as the trustees of these trust deeds were also the settlors of the trusts created by those trust deeds. It is a rule that a settlor must vest the trust property (subject) in the trustee completely, please see *Milory v. Lord* [1862] De G.F. 264. How could the settlors, (the Lee brothers), vest the lands in themselves as trustees when, at the time of signing the trust deeds, they were not owners of the lands both in law and equity as well? Please see *Lysaght supra*.

e Except for Civil Appeal No. 5 as listed above, i.e. MARS 02-494-91 (Mahkamah Tinggi Guaman Sivil No. 22-42-1988) which we repeat we shall deal with separately and comprehensively later on, all the trusts created by all the trust deeds in all the other civil appeals above-mentioned fail because the relevant trust deeds are invalid, by virtue of uncertainty of the respective subjects of the trusts.

g There is also one other matter, i.e. the counter-claim of the appellant in the lower Court and concerned in each of the civil appeals *viz* No. 8 to No. 14. No evidence at all having been led by such appellant in the Court below on such claim,

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[1994] 3 CLJ

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such appellant having elected to give no evidence at the end of the plaintiffs' case, the counter-claim must continue to stand dismissed.

We will summarize our formal orders and consequential directions at the end of our judgment.

We now deal with Civil Appeal No. 5 referred to earlier. From a photocopy of the document of title in respect of Lot 2042, Mukim of Pedas, District of Rembau held under Q.T.(R), Lot 2042 was transferred to the appellants in this appeal viz. Chok Ang Hai and Lee Geok by Lee Geok Thye, the surviving trustee, and such transfer was registered on 27 November 1976, (note the small similarity in the name of trustee and one of the transferees, it not being a typing error).

Further in the trust deed, the Lot 2042 was declared by the trustees to be held in trust for George Lee, the respondent in this particular appeal.

There was no subsidiary agreement of sale and purchase signed between the Lee brothers and predecessor-in-title of the present landowners of this Lot 2042. From D15 and some sketch plans, we know that this lot was originally agreed among all the parties in the joint-venture agreement to be purchased by one Chai Swee Mork, the 4th party in D15. There is no evidence, documentary or oral, to show the said Chai Swee Mork had sold before the date of the trust deed herein to these two present landowners apart from some passing reference to it by a member of the firm of solicitors for these present landowners in his affidavit filed in support of their application to add the extracted Court order etc. to the appeal record at the outset of the hearing of these 14 appeals before us. No evidence e.g. has been given by Lee Geok Thye (the first respondent) or by Chai Swee Mork about the sale to these two present landowners.

Thus, in the absence of such evidence acceptable to the Court, the Lee brothers, at the time of the signing of the trust deed in this appeal No. 5 were the owners of the Lot 2040 both at law and in equity and the trust created by it does not fail for uncertainty of subject or trust property.

The learned Judge made a finding that George Lee (and all other beneficiaries concerned) were all volunteers, but did not deal with this finding and its effect anywhere else further in his judgment. We agree with this finding, however.

a A volunteer is a beneficiary who has not given any valuable consideration, (in the usual sense of the ordinary law of contract), for the creation of a settlement or trust.

It is a settled rule of equity, that a Court of equity would not render assistance to a volunteer in the case of an incompletely constituted trust.

b An incompletely constituted trust is one in which the trust property has not been finally and completely vested in the trustee.

c An example of such an incompletely constituted trust is in *Milroy v. Lord, supra*, in which certain bank shares were intended to be trust property of the trust deed but the settlor of the trust, when signing the transfer of the shares in favour of the trustee, used the wrong transfer form, and the shares did not reach the share register.

d Here in Civil Appeal No. 5, the trust is not only valid for the reason stated above, but it is also a completely constituted trust from the point of view in regard to a volunteer, because Lot 2040 had completely vested in the trustees when the trust deed was signed on 17 June 1970, there being no evidence to the contrary. Thus the appeal ought to be dismissed in Civil Appeal No. 5 and also in Civil Appeal No. 12, in which Lee Geok Thye, the appellant, is the trustee in respect of this Lot 2040 also.

e To sum up, we allow those of the civil appeals listed above being Civil Appeals Nos 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 13 and 14 with costs here and below and with regard to Civil Appeals Nos. 8, 9, 10, 11, 12, 13 and 14, the dismissal by the lower Court of the counter-claim of each appellant concerned in each of them at the lower Court is hereby confirmed but the costs of such dismissal of such counter-claim incurred in the lower Court will remain payable as ordered by the lower Court, but no further costs on it in this Court will be paid.

We also dismiss the appeals Nos. 5 and 12 listed above, with costs here and below.

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